

**TERRY M. MALLERY, A PROFESSIONAL LAW CORPORATION**  
**TABLE: COMPARISON OF BUSINESS FORMS: TAX ATTRIBUTES**

<b>ATTRIBUTES</b>	<b>SOLE PROPRIETORSHIP</b>	<b>PARTNERSHIP</b>	<b>C CORPORATION</b>	<b>S CORPORATION</b>	<b>LIMITED LIABILITY COMPANY</b>
Taxation of Entities in General	Files on individual income tax return Schedule C, (Form 1040)	Partnership files information return. (Form 1065) Partners declare their share of income or loss on Form 1040.	Corp. files separate tax return.(Form 1120) SHs report their dividends or salary received on Form 1040.	Corporation files separate tax return, (Form 1120S) but pays no federal tax. Corp pays minimum state franchise tax of \$800 and 1.5% on net income that exceeds \$53,333 (2.5% for personal service corporations)	Same as Partnership. Regulations Sect. 301.7701-3 (unless organizers elect corporate taxation). Single Member LLC is generally a "disregarded entity" unless corporate taxation is elected. Can elect S corp status.
Taxation of Income.	Taxed directly to owner. Subject to self-employment tax.	Taxed directly to partners, whether distributed or not. LP also pays minimum franchise tax. All income is subject to self-employment tax, except income to limited partners.	Taxed twice: Once to Corp., again to SHs at 15%, when distributed as dividends Corp. pays Calif. 8.83% of net income, or minimum franchise tax of \$800. Higher federal tax for personal service corps. Corp. may be penalized by accumulated earnings tax if income retained at levels beyond ordinary business needs.	Net Income taxed directly to SHs, whether distributed or not. No self-employment tax on dividend but FICA applies to wages to SHs. Corporation pays state tax of 1-1/2% of Net Income (2-1/2% for personal service corporations.)	Like a partnership, income is taxed directly to members (unless Company elects to be taxed as a corporation) PLUS the LLC pays minimum franchise tax of \$800 per year and a gross receipts (or "total income") tax if corporate taxation is not elected. Self-employment tax to members actively involved in the business.
Deductibility of Losses	Deducted by owner subject to at-risk rules.	Deducted by partners subject to at-risk and passive loss rules.	Losses unavailable to Shareholders, but losses are carried back to prior income years.	Deducted by SHs subject to at-risk and passive loss rules, but losses limited by basis rules.	Deducted by members, subject to at-risk and passive loss rules; same as partnership
Ability to Allocate income, etc. Differently from Ownership Interests.	NA (one owner).	Yes, per partnership agreement, provided there is substantial economic effect.	No.	No.	Yes, per operating agreement; provided there is substantial economic effect. S corp election will limit special allocations due to "one class of stock" rule.
Taxation of Capital Contributions	Not taxed.	Generally not taxed unless partner exchanges services for capital interest or sells asset to entity.	Usually not taxed if the requirements of I.R.C. Sect. 351 are met. Contribution of services is taxed under I.R.C. Sect. 83.	Same as C. Corp.	Same as Partnership.
Sale of Business Interest.	Each asset taxed separately, according to nature of asset.	Sale of partnership interest results in capital gain or loss.	Sale of stock results in capital gain or loss.	Same as C. Corp.	Same as Partnership.

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Taxation of Distribution to Owner on Withdrawal or Death	Not taxed.	Not taxed until distributions exceed basis of interest; capital gain thereafter.	Corporation pays tax, then gain from a distribution complete redemption of SH stock can be capital gain; otherwise, ordinary income.	Single tax generally, since corporate gain increases SH basis.	Same as Partnership.
Taxation on Distribution of Appreciated Property	Not taxed.	Not taxed to partnership. Taxed to receiving partner to extent value of property exceeds basis in partnership interest.	Taxed to corp; then taxed again to receiving SH to extent value of property exceeds basis.	Taxed once generally, to extent value of property exceeds basis.	Same as Partnership.
Income Splitting among Family members	Available only by paying wages to family member.	Possible, if strict requirements of I.R.C. Sect. 704(e) met.	Possible by transfer of stock ownership. However, IRS may reapportion income, deductions, etc., to prevent tax avoidance and clearly reflect income. Sec. 482	Same as C. Corp., except SHs taxed on income, whether or not distributed.	Same as Partnership.
Start-up Expenses	May be amortized over no less than 60 mos., except that costs incurred in determining appropriate business entity and tax planning may be expensed immediately.	Same as SP.	Same as SP.	Same as SP.	Same as SP.
Alternative Minimum Tax	Applicable to Owner.	Applicable to partners, not to partnership.	Applicable to corp.; also applicable to SHs.	Applicable to SHs.	Same as Partnership.
Choice of Tax Year.	Requires same year as owner.	Generally required to be calendar year, or same year as principal partners or majority of partners.	Unrestricted initial choice of tax year.	Required to be calendar year, unless approved business purpose or another exception exists. Regulation Sect. 18.1378 & 1.441-1T(b)(4)(i)	Same as Partnership.
Fringe Benefits are Available to Owner Employees.	Many benefits available.	Similar to SP.	More benefits available than to SP or GP, e.g., full deduction for medical insurance, borrowing from pension plan. Section 401(a)(13)	Similar to GP for more than 2 percent SHs.	Same as Partnership
Method of Accounting	Usually cash method.	May use cash method unless 1) has a C Corporation partner, and 2) gross receipts greater \$10 million.	Most types of business may use cash method, unless gross receipts are more than \$10 million	May use cash method unless it is a tax shelter. Sec. 448	May use cash method.
Discounts re. Estate and Gift Tax	None	Substantial discounts available	Smaller discounts available	Smaller discounts	Substantial discounts available